

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

EDWARD JOHNSON, JR. d/b/a F & E FARMS

PLAINTIFF

V.

NO. 2:95CV157-B-O

PARKER TRACTOR & IMPLEMENT CO., INC.

DEFENDANT

MEMORANDUM OPINION

This cause comes before the court on the plaintiff's motion to remand. It was removed from state court on the ground of federal question jurisdiction. The original complaint alleged a violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et. seq. The plaintiff asserts that the federal claim was inadvertently and erroneously alleged in the complaint. One day after the removal, the plaintiff filed an amended complaint deleting any reference to the Magnuson-Moss Warranty Act [the Act] pursuant to Rule 15 of the Federal Rules of Civil Procedure. The plaintiff contends that there is no cognizable cause of action under the Act since it applies to only consumer products, exclusive of agricultural products. See 16 C.F.R. 700.1(b).¹ The defendant does not dispute this contention. The court finds that the allegation of the federal claim was erroneous, regardless of whether it was inadvertently included in the original complaint.

The Fifth Circuit has set forth the

¹This action arises out of the purchase of a combine.

general rule that removal jurisdiction should be determined on the basis of the state court complaint at the time of removal, and that a plaintiff cannot defeat removal by amending it.

Cavallini v. State Farm Mut. Auto Ins. Co., 44 F.3d 256, 265 (5th Cir. 1995). Since the original complaint identifies farm equipment, as opposed to a consumer product, as the subject of the alleged warranties, it fails to state on its face a claim for which relief can be granted under the Act. "Federal jurisdiction may not be premised on the mere citation of federal statutes." Weller v. Dep't of Social Services, 901 F.2d 387, 391 (4th Cir. 1990). The defendant does not dispute that relief can not be obtained in this action under the Act. Since the remaining claims are state law claims, the court concludes that the original complaint was not removable on the ground of federal question jurisdiction. Since diversity of citizenship does not exist, the court finds that the motion to remand is well taken. "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c).

Even if the original complaint arguably invokes federal question jurisdiction, the court has discretion to remand this cause since the purported federal claim has been extinguished. See 28 U.S.C. § 1367(c)(3) (district court may decline to exercise supplemental jurisdiction if it "has dismissed all claims over which it has original jurisdiction"). An order granting leave to

amend the complaint to delete federal claims falls within the purview of section 1367(c)(3). See In re Prairie Island Dakota Sioux, 21 F.3d 302, 304 (8th Cir. 1994).² As noted by the Fifth Circuit, the Supreme Court has held that a district court has discretion to remand a case

in which all of the federal law claims were dropped by the plaintiff after removal, leaving only pendent state law claims.

Buchner v. Fed. Deposit Ins. Corp., 981 F.2d 816, 820 (5th Cir. 1993); (citing Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 98 L. Ed. 2d 720 (1988)).

The plaintiff filed an amended complaint one day after removal and moved to remand only eight days after removal. Accordingly, the court has not expended significant judicial resources in this action. Assuming arguendo that the court had subject matter jurisdiction at the time of removal, the court finds that the factors of judicial economy, convenience, fairness and comity weigh in favor of remand.

An order will issue accordingly.

THIS, the _____ day of January, 1996.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE

²The plaintiff in this cause properly amended the complaint without leave of court since no responsive pleading had been served.